



**Public Service
of New Hampshire**

A Northeast Utilities
Company

780 No. Commercial Street, Manchester,
NH 03101

Public Service Company of New Hampshire
P.O. Box 330
Manchester, NH 03105-0330

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Legal Deficiencies in the Town of Eliot's Section 126 Petition

I. Summary

The section 126 petition filed by the Town of Eliot (the "Town" or "Eliot")¹ requests that the Environmental Protection Agency ("EPA") find that emissions from Schiller Station, a coal-fired facility located in New Hampshire and owned and operated by Public Service Company of New Hampshire ("PSNH"), are significantly contributing to nonattainment of the 1-hour sulfur dioxide (SO₂) National Ambient Air Quality Standards ("NAAQS"). The Town's Petition was openly conceived, developed, and prepared in all respects by Sierra Club as part of its "Beyond Coal" campaign² to shut down all coal-fired electric generating facilities in America, regardless of the impact on or cost to the public.³ At least three major flaws, however, require denial of the Petition and also differentiate this Petition from the one at issue in *GenOn Rema, LLC v. EPA*, 722 F.3d 513 (3d Cir. 2013).⁴

First, *as a threshold matter*, the Town is located in an area that is in compliance with the NAAQS. Section 126 provides a remedy only for areas in "nonattainment." But Eliot has never been in noncompliance with the SO₂ NAAQS. Indeed, in 2011, the Governor of Maine informed EPA that monitoring by the Maine Department of Environmental Protection ("MEDEP") demonstrates that *all* areas of Maine (which would include the Town of Eliot) and areas within 50 kilometers of Maine's border (which would include the location of Schiller Station) are "in compliance." Thus, the State of Maine did not recommend that any area be designated as nonattainment. In 2013, EPA concurred with this conclusion. And after learning of the Town's Petition, the MEDEP even sent the Town its analysis showing that "the [MEDEP] is confident that the existing air quality in Eliot would be meeting the national ambient air quality standard for SO₂ for all averaging periods at this time." Attachment A. Because it is logically and factually impossible for Schiller Station to contribute to nonexistent nonattainment, the Petition asks for a remedy where there is no problem. An order of an agency is arbitrary and

¹ See Michael T. Moynahan, Chairman, Board of Selectmen, Eliot, Maine, *Petition Pursuant to Section 126 of the [CAA] to the [U.S. EPA] for Abatement of Emissions from Schiller Station in Portsmouth, New Hampshire that Directly Cause or Contribute to Nonattainment of the One-Hour SO₂ [NAAQS] in the Town of Eliot, Maine* (Aug. 22, 2013) (hereinafter, the "Petition").

² See <http://content.sierraclub.org/coal/>.

³ The Town even neglected to fill in a placeholder Sierra Club included for specific experiences of the Town, of which Sierra Club would have no knowledge. See Petition at 3 ("[IF DESIRED, THE TOWN CAN INSERT ANY RELEVANT DISCUSSION OF ELIOT'S PAST EXPERIENCES WITH SCHILLER AND ACCOMPANYING HEALTH ISSUES.]").

⁴ PSNH believes the petition suffers from many legal and factual infirmities, but emphasizes only three threshold issues here, any one of which requires denial of the petition on its face and relieves EPA of expending resources to consider the Petition further.